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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-third session

SUMMARY RECORD OF THE 21st MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 14 August 2001, at 10 a.m.

Chairperson: Mr. WEISSBRODT

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(a) RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA

(b) PREVENTION OF DISCRIMINATION AND PROTECTION OF INDIGENOUS PEOPLES

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The meeting was called to order at 10.05 a.m.

PREVENTION OF DISCRIMINATION:

(a) RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA;

(b) PREVENTION OF DISCRIMINATION AND PROTECTION OF INDIGENOUS PEOPLES;

(c) PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES (agenda item 5) (continued) (E/CN.4/Sub.2/2001/2, 15-19, 20 and Add.1, 21 and 22; E/CN.4/Sub.2/2001/NGO/2 and 6);

1. Ms. CHING (Amnesty International) said the right to be free from torture should not be denied to anyone in any circumstances and yet torture and inhuman treatment continued to be reported in over 150 countries.

2. Forms of discrimination such as racism, sexism and homophobia meant that certain people were particularly vulnerable to ill-treatment in police or prison custody and were less protected against crimes of violence in the street or the home. Discrimination in the criminal justice system could mean that victims of torture or inhuman treatment were denied the protection of the law, reinforcing the impunity of the perpetrators. Perceived differences of race, gender and sexual identity had long been seen as justifying efforts to exclude certain people from full membership of the human family, and the denial of a person's basic humanity was the first step towards killing, torture and inhuman treatment.

3. Many people experienced multiple discrimination based on a combination of factors, such as gender and caste or race and sexual orientation, and one form of discrimination could thus not be tackled in isolation from others. All forms of identity-based discrimination assaulted the very notion of human rights by denying that all human beings were equal in dignity and worth, and that was why international human rights law was grounded on the fundamental principle of non-discrimination.

4. While many efforts had been made within the United Nations system to address discrimination on grounds such as race or gender, her organization was concerned that other related forms of discrimination had received less attention. Ill-treatment of lesbian, gay or bisexual people was a widespread problem, but one which appeared to provoke little outrage: such cases were rarely documented, and when complaints were made they were frequently met with official indifference. She urged the human rights movement, including the United Nations human rights system, to guard against colluding with such a conspiracy of silence. In many cases, torture and other abuses of sexual minorities were justified by the authorities in the name of culture, religion, security or public morals.

5. She welcomed the interest shown in the subject by five special rapporteurs of the Commission on Human Rights, as well as the recent work by some of the treaty bodies on identity-based discrimination. In particular, she welcomed the reference to discrimination on the

basis of sexual orientation in the introduction to Mr. Pinheiro's working paper for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

6. Combating discrimination was an essential part of the fight against torture, and she called on the Sub-Commission to play a pioneering role in that regard.

7. Ms. MOTOC said she endorsed the views of those non-governmental organizations (NGOs) which had urged that the Working Group on Indigenous Populations should continue its activities. She hoped, that in future, the Group would be able to deal with the question of minorities in a somewhat less academic way and would be able to interact more closely with the populations concerned.

8. Ms. FANG (Asian Women's Human Rights Council) said that, following the Japanese colonization of Korea, systematic discrimination had been practised against Korean residents in Japan, and such discrimination still continued. Pupils attending Korean schools and wearing Korean national costume were often the targets of verbal and physical abuse, but the Government took no effective measures to halt it. In March of that year, the Committee on the Elimination of Racial Discrimination (CERD), in its concluding observations, had expressed concern at that situation and had recommended that the Government should adopt more resolute measures to prevent and counter such acts. Korean students also suffered from systematic discrimination with regard to their qualifications for university entrance and eligibility for financial support.

9. The Japanese Government should acknowledge its responsibility for both past and current wrongdoing in respect of the Koreans. Protection of the dignity of ethnic minorities was an essential part of the protection of human rights generally, and she urged the Sub-Commission to address the issue and to make an appropriate request to the Government of Japan.

10. Mr. GHULAM MUHAMMAD (International Islamic Federation of Student Organizations), referring to paragraph 78 of the report of the Working Group on Minorities on its seventh session (E/CN.4/Sub.2/2001/22), said he agreed that "internal" self-determination or autonomy could meet the demands of minorities who sought a redress of their grievances within the constitutional framework of their own country, while external self-determination could meet the demands of the people of disputed or occupied territories. It was unfortunate that the Dalits, who were seeking an end to decades of discrimination, humiliation and suffering, were meeting a similar fate to those resisting an occupying Power. Activists were jailed to prevent them from holding meetings and protest rallies, and charged with terrorism or with threatening national security.

11. The plight of Indian Muslims, Christians, Sikhs and Dalits had been brought to the attention of the Sub-Commission by a number of NGOs. In particular, the Working Group on Minorities should consider two reports by Human Rights Watch, one on the subject of India's hidden apartheid and the other on the subject of its secret army. Lastly, he endorsed the comments by Mr. Kartashkin, contained in paragraph 88 of the report, concerning the experience gained in respect of ethnic autonomy in the Russian Federation.

12. Mr. NORWOOD (Pax Romana) drew attention to article 2, paragraph 3, of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which stated that persons belonging to minorities had the right to participate effectively in decisions at the national and regional levels concerning the minority to which they belonged. More than half of the 180,000 rejected ballots in the State of Florida in the 2000 presidential election had been African-American votes. Although the African-American turnout in Florida had been 65 per cent higher than for the previous presidential election in 1996, 14.4 per cent of black voters had cast ballots that were rejected as compared with approximately 1.6 per cent of non-black Florida voters.

13. The list of persons disqualified from voting, supplied by a private company, had been riddled with inaccuracies, again disproportionately penalizing African-Americans. Poor counties, particularly those with large minority populations, were more likely to possess voting systems with high rejection rates than more affluent counties with significant white populations, an example of the covert racism that still persisted. Such irregularities were not confined to Florida, but were found throughout the United States of America

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14. The fact that the current administration was not responsive to black issues was demonstrated by the position adopted by the United States delegation in the Preparatory Committee for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. The disenfranchisement of peoples of African descent was a matter of extreme concern to the African-American community, and also, it was to be hoped, to the international community as a whole. He urged the Sub-Commission to undertake a study on the effective participation of peoples of African descent in decisions concerning them in all parts of the world.

15. The working paper prepared by Mr. Goonesekere on discrimination based on work and descent (E/CN.4/Sub.2/2001/16) marked an important stage in the progress towards the elimination of racial discrimination. His organization was concerned that the Dalits in India continued to suffer multiple discrimination on account of their work and descent and that, although laws were in place, there was a clear lack of will to enforce them. He appealed to the Sub-Commission to continue its work on the subject, since its recommendations would effectively enhance the programme of action of the World Conference.

16. Lastly, he welcomed Mr. Weissbrodt's preliminary report on the rights of non-citizens (E/CN.4/Sub.2/2001/20 and Add.1), and wished to draw particular attention to the case of non-citizen indigenous children in Thailand, who received no certification on completion of their studies at the age of 12 and were thus barred from further studies and from gainful employment. That situation should be taken up by the Sub-Commission, in view of the fact that Thailand had ratified the Convention on the Rights of the Child.

17. Mr. EIDE, Chairperson-Rapporteur of the Working Group on Minorities, said that he would encourage organizations representing African-Americans to prepare working papers for submission to the Working Group, so that it could address their concerns.

18. Mr. MAXIM (Observer for Romania) said that, on 19 June 2001, the Hungarian Parliament had adopted a law concerning Hungarians living in the neighbouring countries of

Croatia, the Federal Republic of Yugoslavia, Romania, Slovenia, Slovakia and the Ukraine. Under that law, the ethnic Hungarians concerned would benefit from assistance in education, science and culture, notably in the form of scholarships, social security provision and medical services, and would receive subsidies for travel and for training in Hungary and other countries as well as help in obtaining employment. Such benefits were accessible to persons in possession of a certificate confirming their Hungarian nationality, issued by the Hungarian authorities.

19. His Government considered that the Law introduced positive discrimination in favour of one of Romania's minorities, to the detriment of the majority of the population and the other minorities. Positive discrimination was generally allowed only as a temporary measure, whereas the Law was effective for an indeterminate period. He pointed out that, under a bilateral treaty of 1996 between Romania and Hungary, citizens belonging to national minorities had the same rights and duties as citizens belonging to the majority population. The Law of 2001 had been adopted by Hungary without consultation with Romania, and its provisions went well beyond established European standards in the area of protection of national minorities, notably those adopted within the framework of the Council of Europe.

20. Mr. ANOSHKO (Observer for Belarus) said that Belarus, which was a party to the International Convention on the Elimination of All Forms of Racial Discrimination, considered that one of the most crucial tasks of the United Nations was to promote respect for fundamental rights and freedoms regardless of race or ethnic origin. Belarus was a multinational State, which included Ukrainians, Russians, Latvians and Tartars, but it was unique in that all the minority groups coexisted in harmony and there had been no instances of internal strife. It was the policy of the Government to implement legislation guaranteeing full equality for all members of society: in particular, political parties seeking to disseminate racial hatred were banned, and associations furthering the language and culture of minority groups were encouraged.

21. Belarus had suffered under the Nazi regime, and therefore viewed with great concern the rise of neo-Nazi movements in Western Europe which, it was glad to note, had been condemned by the General Assembly. It attached great importance to the forthcoming World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, which it saw as a landmark in the progress towards the elimination of discrimination.

Statements in exercise of the right of reply

22. Mr. SUNGAR (Observer for Turkey), noting the continuing concern shown by Ms. Hampson with regard to developments in Turkey, said that additional information seemed to be required to avoid a biased stereotyping of the demographic structure and constitutional order of his country. It was incorrect that all the victims in cases where Turkey had been found guilty of killings and torture by the European Court of Human Rights were of Kurdish origin. Consequently, the conclusions Ms. Hampson had drawn from her statistics were also incorrect.

23. The Turkish State recognized a multitude of ethnic, religious and cultural identities, and did not attempt to impose any single model. Professor Peter Andrews, a former professor of anthropology at the University of Cologne, Germany, had found that 47 different ethnic groups existed in Turkey, and that they were all mixed both geographically and socially.

24. His country was proud of its mixed cultural, ethnic and religious heritage. All Turkish citizens were treated equally before the law, and were not subject to any discrimination with regard to their statutory rights. Referring to the statement already made by his delegation under agenda item 2, he said that the improvement in human rights in Turkey was an irreversible process. It was untrue that the remaining deficiencies were directed at any particular group of people.

25. Mr. SAWMY (Observer for Mauritius) said, with reference to a statement made by an NGO concerning the Chagos Archipelago, that the territory had been unlawfully annexed by the United Kingdom, in violation of a series of United Nations resolutions, before Mauritius had gained its independence. The inhabitants of the Chagos Archipelago, who were also Mauritian citizens, had been forcibly displaced and prevented from returning to their homes in what had always been an integral part of Mauritian territory. At the United Nations General Assembly in 2000, his Government had reiterated its demand for its citizens to be allowed to return to the Archipelago. It would continue to monitor any attempts to infringe upon its sovereignty.

26. Mr. LAKATOS (Observer for Hungary), responding to the comments made by the observer for Romania, said that forward-looking and historic decisions were often misunderstood when they were first announced. The Law adopted on 19 June 2001 by the Hungarian Parliament was no exception. Despite his Government's willingness to enter into a dialogue on issues related to the implementation of the Law, several misinterpretations appeared to remain.

27. The Law was designed to preserve the linguistic and cultural identity of Hungarians living in the neighbouring countries, through the provision of benefits and assistance made available on application. It constituted an example of positive affirmative action, designed to compensate minorities for their disadvantaged situation. While the basic treaties of the European Union contained a ban on arbitrary discrimination between persons, support for minorities did not constitute discrimination.

28. The Law in question provided assistance to persons on the basis of their freely embraced linguistic and cultural identity, and not on the basis of origin or ethnicity. It was not inconsistent with any of the laws of the countries affected, and the Hungarian authorities would not engage in any administrative acts outside their own sovereign territory. Other countries in the region, including Romania, Croatia and Poland, had already introduced similar schemes aimed at the preservation of the identity of citizens in other States. The real beneficiaries of the Law would be the neighbouring countries themselves, which would enjoy the enriching impact of cultural diversity. The objective was consistent with his country's vision of a Europe united in its diversity.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 4) (continued)

29. Mr. GUISSÉ, presenting the report of the sessional working group to examine the working methods and activities of transnational corporations, said that papers written by himself, Mr. Weissbrodt and Mr. Eide had been considered by the group. His own paper had focused on the impact of the activities of transnational corporations on human rights, and the division of responsibilities between the corporations and the States in which they were based. Mr. Weissbrodt had done the preparatory work for the development of guidelines for

transnational corporations on their impact on human rights. In the course of a lively debate, he had invited all interested parties to contribute their suggestions. Most participants had agreed that the guidelines should be used to elaborate legally binding rules, provided that they were not inconsistent with the existing human rights instruments. Many speakers suggested that, in view of the difficulty of defining a transnational corporation, the rules should also apply to domestic companies. Mr. Eide had submitted an important study on the modalities of implementing such rules and ensuring that States complied with their responsibilities.

30. The working group had heard statements by a number of Sub-Commission experts, as well as by representatives of international organizations and NGOs and he expressed his appreciation of the range of contributions. The working group had asked for a further three years to be added to its original mandate, so that its experts could continue the work they had begun. They intended to consider all the legal, economic and social issues concerning transnational corporations, with a view to drawing up a legally binding set of rules on their impact on human rights.

OTHER HUMAN RIGHTS ISSUES:

(a) WOMEN AND HUMAN RIGHTS;

(b) CONTEMPORARY FORMS OF SLAVERY;

(c) OTHER ISSUES

(agenda item 6) (E/CN.4/Sub.2/2001/4, 23, 24 and 26-32; E/CN.4/Sub.2/2001/NGO/23 and 24; E/CN.4/2001/82 and Add.1 and 96)

31. Ms. KOUFA, Special Rapporteur on terrorism and human rights, introducing her progress report (E/CN.4/Sub.2/2001/31), said that terrorism was a distinctive form of criminal activity which encompassed elements of politics and conflict, and concerned every region in the world in some way or another. Her mandate thus dealt with a problem of extreme complexity and diversity. The scope of her progress report had also been extended on the basis of several requests by the Commission on Human Rights to pay attention to a number of human rights questions relating to the principal issue of terrorism. It had been difficult to reconcile the need to provide theoretical insight into the complex issues raised by the impact of terrorism on human rights and the need to deal with the concerns voiced by the Commission.

32. She had processed a vast amount of information from a variety of sources, including the United Nations Office of Legal Affairs and the Terrorism Prevention Branch of the United Nations Office for Drug Control and Crime Prevention. Some important contributions from Governments and NGOs had unfortunately been received too late to be considered for the current progress report.

33. She drew attention, in the introduction to the report, to the mainly legal focus of the analysis. In chapter I, she highlighted the fact that the update on international action was not confined to the activities of the United Nations, but included action taken at the regional level. Chapter II took up the debate on the definition of terrorism, and attempted to avoid the existing

controversy within the Sub-Commission, concentrating instead on the question of who could be considered a potential user or author of terrorism. Rather than seeking to determine what conduct or acts could currently be included under the concept of terrorism, she had tried to approach the concept by reference to the instigators or authors in situations that were commonly perceived as "terrorism".

34. She had examined the foremost distinction between State and sub-State (or individual) terrorism, including the gradual blurring of the dividing line between terrorism and criminality. Within the category of State terrorism, she had addressed the issue of international State terrorism, which enlarged the scope of State terrorism to a degree that would include the use of force in international relations. With regard to sub-State terrorism, the wealth of literature and the existing controversy on the issue had convinced her that a detailed discussion should be postponed to a later stage.

35. In chapter III, she drew attention to the discussion of the possible terrorist use of weapons of mass destruction and to the role of new information technologies. Chapter IV was devoted to consideration of the concerns expressed by the Commission in its resolutions 1999/97, 2000/30 and 2000/31. In that connection she wished to highlight the fact that it included specific sections on the direct and indirect impact of terrorism on human rights, the question of impunity and extradition. Her conclusions, in chapter V, included the recommendation that the Sub-Commission should authorize her to prepare a second progress report.

36. Ms. PARKER (International Educational Development, Inc.), welcoming the progress report (E/CN.4/Sub.2/2001/31), said that she agreed with the conclusion that State terrorism produced far more gross violations of human rights than any other form of terrorism. China was currently involved in a violent assault on Falun Gong practitioners which amounted to State terrorism.

37. Under agenda item 3, the observer for China had attempted to justify his Government's campaign by claiming that the Falun Gong had caused deaths and the break-up of families. However, the investigation carried out by her organization had revealed that the only deaths had been at the hands of the Chinese authorities, as part of a campaign which included extreme torture, incarceration in mental hospitals and confinement in labour camps. The incident alleged by the regime to be proof of the Falun Gong's evil intent had been staged, and a video held by her organization demonstrated that to be the case.

38. In a recent report by the Special Rapporteur of the Commission on Human Rights on the question of torture, (E/CN.4/2001/66), reference was made to the torture of tens of thousands of Falun Gong practitioners. The Special Rapporteurs on violence against women and on extrajudicial, summary or arbitrary executions had attested to similar abuses. Information compiled by her own organization suggested that at least 50,000 Falun Gong practitioners had been detained, and hundreds of thousands, perhaps millions, were threatened by the Government's brutal campaign. The mechanisms of the United Nations were incapable of dealing with such huge numbers of victims.

39. She fully agreed with the Special Rapporteur's analysis of armed conflict and terrorism. Her organization had long been an opponent of attempts by Governments engaged in armed conflicts with opposition groups to reduce such conflicts to a terrorism/counter-terrorism model. That rhetoric was often used to undermine the right to self-determination, as in Indian-occupied Kashmir.

40. Referring to paragraph 71 of the progress report, she said that her organization had long objected to the use of terms such as "ethnic conflict" and "nationalist/separatist conflict" to describe the war between the Sri Lankan authorities and the Liberation Tigers of Tamil Eelam (LTTE), the war between the Turkish authorities and the Kurds, and the wars in Indonesia involving the Acehnese and Moluccans. Any analysis of those wars should take self-determination issues into account.

41. Referring to paragraphs 112 to 117 of the report, she noted that, while terrorism itself was generally viewed as an international crime, the way in which States prosecuted alleged terrorists under domestic legislation should be assessed as a human rights concern just like any other question of criminal justice. Her organization urged the Special Rapporteur to review domestic "anti-terrorist" scenarios, focusing on so-called terrorist lists.

42. Her organization also urged Governments to contribute to the United Nations Voluntary Trust Fund on Contemporary Forms of Slavery to render possible meaningful participation in the sessions of the Working Group on Contemporary Forms of Slavery.

43. Ms. VERZEGNASSI (European Union of Public Relations) cited passages from the annual report of the United States Department of State on Patterns of Global Terrorism in 2000 concerning support by the Government of Pakistan for the Taliban in Afghanistan and for terrorist groups active in Kashmir. She further cited a passage from the Canadian Security and Intelligence Service's annual report to Parliament for 2000 concerning support by Pakistan for Sikh extremists, and from two Pakistani newspapers concerning official support for groups engaged in jihad.

44. The Government of Pakistan asserted that the terrorist groups had no bases on its territory but the groups themselves gave details of their addresses and bank accounts in Pakistan in their literature and on their Internet Web sites. India had been the victim of terrorism emanating from such groups for over a decade but the repercussions of their activities were also felt in Nepal and Bangladesh. Persons recently arrested in connection with assassination attempts and bomb blasts in Bangladesh asserted that they had been trained by the Pakistan-backed Taliban in Afghanistan.

45. The international community and human rights activists should single out and censure States which, in the name of religion and holy war, encouraged murder and mayhem in other countries.

46. Ms. GRAF (International League for the Rights and Liberation of Peoples) said that a clear-cut distinction must be made between terrorism by States and terrorism by groups and/or individuals. Referring to the statement in the Special Rapporteur's previous report (E/CN.4/Sub.2/1999/27) that non-State authors of terrorist acts were not bound by the provisions

of international law, she urged Ms. Koufa to persist in her search for a precise definition of the notion of terrorism so that those committing acts of terrorism could be identified and categorized. The United Nations Commission on Crime Prevention and Criminal Justice might be able to assist her in the task. Other points that merited attention were compensation to victims of terrorist acts and the compilation of lists of States that financed and supported terrorist groups.

47. Some States supported a culture of war. For example, the Kurdistan Workers Party (PKK) had declared a cessation of the armed struggle in 1999, but its initiative had not met with the expected response from the Turkish authorities. As a result, thousands of Kurds in exile in Europe had declared themselves to be supporters and members of PKK. The United Kingdom had then taken the illogical step of adding PKK to its proscribed terrorist list. In Sri Lanka, the LTTE unilateral declaration of a ceasefire in December 2000 had been categorically rejected by the Sri Lankan Government, which characterized its hostilities as a "war for peace". Who were the terrorists under those circumstances?

48. The setting of mandatory standards and their effective enforcement with a view to ending all forms of terrorism, including fundamentalism and fanaticism, called for an effort of will on the part of the international community. Voting patterns in recent years on resolutions concerning human rights and terrorism in the Commission on Human Rights revealed, however, the extent of reservations and apathy among States, especially the five permanent members of the Security Council.

49. Mr.ÜNLER (Observer for Turkey) said that his country, having endured the effects of terrorism for many years, attached special importance to the fight against all terrorist acts and practices, which posed a serious threat to human rights, fundamental freedoms and democracy. The purpose of terrorist acts was to spread fear and to undermine the foundations of society, destabilizing Governments. Terrorist organizations financed their criminal acts through drug and arms trafficking and exploited the potential of new communication technology.

50. The Special Rapporteur had shown great courage in tackling such a sensitive topic. At a time when transnational terrorism was exploiting every available loophole in the judicial system, serious human rights violations by non-State actors, who were not subject to control by international law and human rights monitoring machinery, were a source of growing international concern. He hoped that the Special Rapporteur, who had announced her intention to address the subject, would attach increased importance to it in her next report.

51. He took issue with the title of chapter II, section B, subsection 4 "Manifestation of sub-State (or individual) terrorism", which he found ambiguous since it referred to actors who committed acts of terrorism against the State. The term "non-State actors" was preferable.

52. The progress report failed to lay sufficient emphasis on the fact that some States organized or encouraged terrorist activities on the territory of other States or tolerated activities on their territory aimed at the commission of terrorist acts.

53. More attention should also be given to the need for more effective international cooperation in the fight against terrorism, organized crime and drug trafficking.

54. Mr. GUISSÉ, commending the Special Rapporteur on her progress report, said that the subject presented two major challenges: drawing a line between State and non-State actors and defining a terrorist act. Context and perspective played a major role: depending on one's point of view, an act could be viewed as a contribution to national liberation or a violation of domestic or international law. Hence the difficulty of setting standards that were acceptable to all. A liberation movement considered its acts to be legitimized by the right of peoples to self-determination. He urged the Special Rapporteur to work on a precise definition of terrorism based on objective standards derived from legal norms. In his view, it was the most difficult study ever undertaken by the Sub-Commission.

55. Mrs. WARZAZI congratulated the Special Rapporteur on the impartiality and objectivity she had displayed in her progress report and the cautious approach she had adopted to an emotionally and politically charged subject. The Sixth Committee of the General Assembly had failed to agree on a definition of terrorism. An even thornier issue was who exactly qualified as a "terrorist". The progress report identified two categories of author: States and individuals or groups of individuals. The description of States that fell either directly or indirectly into that category was perfectly clear.

56. She shared the Special Rapporteur's view that a distinction must be made between armed conflicts and terrorism. In any case, it was unacceptable that a civilian population should be subjected to unlawful acts comparable to acts of terrorism. Such acts were, moreover, prohibited by Additional Protocols I and II to the Geneva Conventions. She also agreed that alarmist analyses of the potential use of weapons of mass destruction for terrorist purposes might divert attention from human rights violations associated with counter-terrorist strategies premised on those analyses. A further important point was that it was the responsibility and duty of States to protect the life and safety of those under their jurisdiction against acts of terrorism.

57. Lastly, it was clear that action taken by people under foreign occupation such as the Palestinians should on no account be assimilated to terrorism. While unreservedly deploring the fact that the victims were often innocent civilians, she stressed that the ultimate responsibility lay with the occupiers because such acts fortified them in their position of foreign occupation and allowed them to commit acts of State terrorism in return.

58. Mr. GOONESEKERE, having complimented the Special Rapporteur on her perceptive analysis of different forms of terrorism in terms of political science and international law, said that her deliberate avoidance of references to country situations was to be welcomed. The attention of States should be drawn instead to the conceptual analysis of the actors involved in State terrorism, State-supported or State-sponsored terrorism and international State terrorism. He agreed with the Special Rapporteur that such an approach made the lack of a universally accepted definition less of an obstacle. He also welcomed the fact that sub-State or individual terrorism was set in its proper historical perspective.

59. He wondered whether ordinary criminal legislation provided an adequate framework for dealing with terrorism. Most countries thought it did not, but any deviations from the ordinary criminal law should not go beyond the requirement to ensure national security in a democratic society.

60. He suggested that chapter IV, section A, subsection 2 entitled "Special note on judicial process rights" could usefully be expanded in the Special Rapporteur's next report.

61. Mr. EIDE praised the structure of the progress report, including the discussion of State and non-State terrorism and their manifestations. He welcomed the statement in paragraph 129 that States with good human rights records were less likely to have problems with domestic terrorism and that States with international relationships consonant with the Charter of the United Nations tended to be least affected by international terrorism. He also agreed with Mrs. Warzazi that acts of violence, albeit sometimes indiscriminate, often resulted from the unendurable circumstances of occupation.

62. He wondered whether the Special Rapporteur was justified in excluding from the study acts of "terror" (acts whose primary purpose was to spread terror, especially in the context of armed conflicts) and humanitarian law. She stated in paragraph 76 that the term "ethnic conflict" referred to a war that was still governed by humanitarian norms and was either a civil war or an international war. According to paragraph 77, it was rarely necessary, when it came to determining whether a situation was an armed conflict or terrorism, to decide whether an armed conflict was a civil war or one in which a group with a claim to self-determination was fighting for national liberation. He pointed out that the claim to be fighting for self-determination was often vastly overstated and unjustifiable under international law. Moreover, in the case of the situation in Sri Lanka, he noted that, in some contexts, the LTTE were engaged in an armed conflict against the Government - a conflict that was covered by humanitarian law - but that, in other contexts, they were responsible for acts of sheer terror, such as the use of suicide bombers, which did not fall within the definition of an armed conflict.

63. The concept of acts of terrorism should be distinguished from the notion of a terrorist actor. Not all perpetrators of acts of terrorism were terrorists. A State that engaged in some form of terror did not necessarily qualify as a terrorist State and a movement that sometimes committed acts of terror was not necessarily a terrorist organization. Given the need, however, for action to counteract the use of acts of terror, such acts should be covered by the study.

64. It might be useful to distinguish between sub-State terrorism carried out with the acquiescence of the State, for example where the authorities came from the same social or ethnic group as the perpetrators of acts of terror, and terrorism carried out by actors opposed to the dominant groups in society.

65. Lastly, he drew attention to the problem of militarization and enhanced internal security arrangements, associated in part with tensions arising from globalization, which led in some cases to the demarcation of part of a country's territory as a security area and to over-reliance on military means entailing what could sometimes be described as acts of terror.

66. Mr. GÓMEZ-ROBLEDO VERDUZCO said that the Special Rapporteur's progress report was an outstanding example of the use of rigorous legal analysis to address a politically explosive subject, thereby shedding light on controversial issues and contributing to the development of international law.

67. A number of treaties enshrined the principle of aut dedere aut judicare, by virtue of which a State party, faced with a request for extradition for an act of terrorism perpetrated in a third State, agreed to limit its sovereign authority to granting or refusing extradition. The principle was an important one because it restricted the parties' freedom to describe the crimes concerned as "political". The principle could have implications for common law also, although State practice was not uniform. In any case, the fight against terrorism should be primarily of a preventive nature and an effective and satisfactory system should be developed to respond to terrorist acts.

68. Although it was preferable to abstain from making a rigid definition of terrorism, that should not prevent a thorough examination of some of the essential elements required to establish an appropriate definition.

69. Lastly, he wondered whether the extradition mechanism should be improved with a view to improving the administration of justice; whether the so-called "principle of universal jurisdiction" should be strengthened both internationally and in internal legislation; and whether the international legal framework for the fight against terrorism was adequate, since many conventions were riddled with ambiguities.

70. Ms. ZERROUGUI said that she, too, was concerned about extradition, owing to the ambiguities that existed in many relevant conventions. The issue should be examined further so as to underline the legal vacuum which, at times, allowed terrorists to benefit from impunity. The previous speaker had mentioned the problem that arose when a terrorist act was classified as a political act and certain States refused to extradite terrorists for humanitarian reasons, for example, the existence of the death penalty or the impossibility of a fair trial in the State requesting extradition.

71. There was also a problem when no treaty existed; certain countries having an Anglo-Saxon tradition required a treaty in order to cooperate or, in the absence of a treaty, that cooperation should be on a reciprocal basis. In the absence of a treaty, nothing obliged such States to extradite or prosecute a person accused of terrorism in another country. Prosecution was sometimes impossible because there were no provisions for extraterritorial jurisdiction for crimes committed abroad, by foreigners, against foreign interests. She hoped that the issue would be analysed further and that, as in the case of crimes against humanity, States would cooperate so that terrorists did not escape punishment.

72. Ms. MOTOC said that, in view of the fine line that the report drew between terrorists and freedom fighters and the different conceptions of justice that existed within the United Nations and even within the Sub-Commission itself, it might be advisable to try to define terrorism.

73. With regard to the conceptual framework, the progress report (para. 66) stated that the basic notion embodied in the Charter of the United Nations was that the threat or use of force was prohibited in international relations unless undertaken in self-defence (Article 51) or in terms of the exception provided for in the final sentence of the domestic jurisdiction clause (Article 2, paragraph 7). In the latter case, the United Nations could become involved under

Chapter VII, if the Security Council determined the existence of a threat to the peace. In fact, the Security Council had already stated that terrorism was a threat to peace, but further juridical clarification on that point was clearly needed.

74. Also, with regard to exceptions to the prohibition to resort to force, it was necessary to examine the new issue of humanitarian intervention and the mandates given by the United Nations to States prepared to become involved in certain situations that the Security Council considered to be a threat to the peace.

75. Mr. JOINET said he agreed that it was too early to establish definitions, which could change with the passage of time. The distinction between terrorism and armed conflict was a complex one, in particular, in the case of armed conflicts linked to wars of independence. He was thinking, for example, of the French Resistance in the Second World War. It might be useful to consider what became of the concept of terrorism when there was a process of democratization; in other words, when a goal had been partly attained through political violence, the question arose whether such violence had or had not been legitimate. It was necessary to analyse the specific circumstances of each case but it was important also to recall the preamble to the Universal Declaration of Human Rights which stated that it was essential, if man was not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

76. In that regard it was interesting to examine the evolution of ETA, the Basque separatist movement, in Spain. That struggle, using violence or political action, together with other efforts, had led to the demise of Francoism, while similar movements had ended the Salazar regime in Portugal and other regimes in the western hemisphere. It was interesting to see how terrorism gradually adapted to the evolution of history. Consequently, in line with the preamble to the Universal Declaration, political violence could be legitimate when used to fight tyranny but was totally indefensible once the tyranny had been overthrown. There was a fundamental rule, however, that was always applicable, whether during a struggle against tyranny or subsequently, and that was that the civilian population must never be targeted.

77. Ms. BALOUCH (Observer for Pakistan) said that Pakistan condemned terrorism in all its forms and had ratified most of the relevant international instruments. The role of the Sub-Commission was to address the underlying root causes, that resulted in people resorting to non-peaceful means of protecting their fundamental human rights. Her delegation believed that those factors should form the basis for defining whether or not an act constituted terrorism, rather than the identity of the victim or the nature of the act.

78. Some States had made use of the absence of a definition of terrorism to justify systematic human rights violations in disputed territories under their occupation or control or to deny people their right to self-determination by branding liberation movements as terrorist activities; the Non-Aligned Movement had repeatedly stressed the need to address the issue of defining terrorism.

79. The concept of terrorism should be qualified to take into consideration the principles of self-determination and self-defence, which were essential to international law and international relations, as well as the circumstances which led to the use of non-peaceful means to restore

fundamental rights. State terrorism should be penalized as it was the most pervasive form of terrorism and accounted for the largest number of casualties; it was also one of the worst forms of terrorism, because it was conducted by organs of the State against its own population or the population of an occupied territory. However, it was not restricted to totalitarian or militarist regimes as indicated in the report (para. 43), and some "democracies" were currently employing terrorist activities to instil fear.

80. While her delegation agreed with most of the analysis of State-sponsored terrorism in the report, it contested the inclusions of moral and diplomatic encouragement by a State as a form of State-sponsored terrorism. That again revealed the need to clarify that a legitimate struggle for freedom and self-determination did not constitute terrorist activities. A clear distinction must be made between the support given by a State to oppressed or occupied people and the form of State-sponsored terrorism aimed at creating anarchy or overthrowing a legitimately constituted State.

81. Some States had stigmatized the reaction of oppressed people seeking justice and the implementation of their human rights as terrorism. In such a situation, as the Special Rapporteur maintained, the States were unwilling to take seriously and impartially their obligations under the enforcement provisions of humanitarian law instruments.

82. Mr. SORABJEE said that the definition of terrorism would be influenced according to the situation in the State where it took place and whether the State was a tyrannical one or whether it had remedies that could be used to improve a situation. Nevertheless, he agreed with Mr. Joinet that, whatever the circumstances, the use of indiscriminate violence against innocent civilians was indefensible.

83. Mrs. WARZAZI, Special Rapporteur on traditional practices affecting the health of women and the girl child, introducing her fifth report (E/CN.4/Sub.2/2001/27), said that, since 1996, only 44 countries had provided the information she had requested on traditional practices affecting the health of women and the girl child, and it was the Asian countries, where many such traditional practices existed, which had been the most remiss in providing information.

84. Africa was firmly committed to the fight against those practices and most African Governments had recognized the damaging effects of such traditional customs of which they had previously been unaware because of the veiling effects of culture and religion. Information and awareness-raising campaigns conducted by the authorities, influential members of society and local NGOs had contributed to changing attitudes. Religious leaders and the young were making an important contribution in that regard.

85. There was reason to be satisfied with the progress achieved since 1982 in making the international community aware of the violence suffered by women and girl children throughout the world as a result of traditional practices. Governments were currently paying particular attention to such violence as reflected in the responses that had been transmitted to her, but also in the statements that the Secretary-General had addressed to the General Assembly, which had been examining the issue of traditional practices and adopting pertinent resolutions.

86. It was urgent that Asian NGOs should forward information on practices that were harmful to the women and girl children of their continent. In the absence of such information, she had consulted the media and found numerous cases of violence against women, resulting from traditional practices. For example, it was reported that, in Baghdad, in April 2001, several women had been executed, without trial, for prostitution; 40 women had been strangled in Iran, in a nine-month period, because conservative forces had given themselves the task of eradicating prostitution and social ills; and hundreds of crimes had been committed in Turkey in the name of honour. The Turkish authorities were adopting the necessary measures, but the "honour" crime appeared to be on the increase.

87. Since 1961, the national authorities had been taking steps against the dowry custom in India and neighbouring countries with similar traditions. It appeared that about 13,000 young wives were killed each year in India because of dowry-related problems, although women's organizations considered that the actual figure was much higher. The international community should pay more attention to that issue.

88. Traditional practices of all kinds should be monitored carefully and dealt with extremely prudently, both nationally and internationally. To ensure success, it was necessary to gain the confidence of the Governments and populations concerned.

89. Lastly, she thanked the Governments, the International Monetary Fund (IMF), the United Nations Food and Agriculture Organization (FAO), the Organization for African Unity (OAU), and the inter-African Committee for their cooperation in activities to eliminate all harmful practices, and for the financial assistance contributed by certain Governments and international NGOs towards eliminating such practices.

The meeting rose at 1 p.m.